THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

W.P.No. 12614 of 1997

Dated: 21-11-2006

Between:-

Hyder Khan

..Petitioner

And

Andhra Pradesh State Wakf Board,
Rep., by its Chairman having its office at
Razzack Manzil, Public Garden Road,
Hyderabad and two others.

..Respondents

HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 12614 OF 1997

ORDER:

This Writ Petition is filed questioning the proceedings No. 2/C1/A/HYD-II-89 dated 31-5-1997 issued by the Chief Executive Officer, Andhra Pradesh State Wakf Board, removing the petitioner as Mutawalli of Wakf, namely, Masjid Suleman Khan Lahori, known as Chand Tera Mosque.

Chand Tera Mosque was registered as a wakf under the provisions of the Wakf Act, 1954, and, is presently governed by the Wakf Act, 1995 (for short 'the Act'). The said wakf was registered under the towlliath of late Sarwar Khan, S/o Mohd.Khan Lahori as per Muntakab No.248 of 1329 Fasli. The petitioner herein was appointed as Muthawalli to manage the above said wakf, vide Wakf Board Resolution No.143 of 1975, dated 10-1-1975.

When the petitioner was continuing as Muthawalli of the above said wakf, the second respondent filed complaint in the Wakf Board on 29-7-1991. Basing on the same, enquiry was conducted

by the third respondent - Enquiry Officer. It was the complaint of the second respondent that the petitioner was mis-managing the property of the wakf and entered into an agreement of sale for selling the above wakf property covered by House No.14-4-129 to one Lal Pahalwan Yadav and illegally collected an amount of Rs.50,000/-. It was also the complaint of the second respondent that the petitioner was allowing some third parties to reside in the wakf property and he also failed to submit yearly budget accounts to the Wakf Board as required under Section 46 of the Wakf Act.

The third respondent, enquiry Officer had conducted enquiry and submitted report to the Wakf Board, and, basing on the same, the impugned order is passed.

The impugned order is questioned on several grounds including the grounds that no valid reasons are assigned in the impugned order, and the impugned order is passed contrary to the findings recorded by the Civil Court in respect of the subject matter of property. It is also the case the petitioner that after submission of the enquiry report, for about two years, no steps have been taken and all of a sudden, without recording any reason, impugned order is passed removing the petitioner as Muthawalli.

Separate counter affidavits are filed on behalf of the second respondent and the first respondent-Wakf Board.

In the counter affidavit filed on behalf of the Wakf Board, it is stated that pursuant to the impugned order of removal of the petitioner as Muthawalli, charge was handed over to the second respondent and second respondent is managing the affairs of the said mosque. It is further stated in the counter affidavit that in the suit filed by the petitioner for injunction, he had projected only one

Muntakab and did not file the other Muntakabs, by which, the property was endowed to Wakf Board.

It is submitted by the learned Counsel appearing for the respondents that on the complaint filed by the second respondent, detailed enquiry was conducted, and, in view of the report of the Enquiry Officer and the resolution passed by the Wakf Board, the petitioner was removed as Muthawalli.

For the order I propose to pass, I need not go into the allegations in detail made by the second respondent. The power for removal of Muthawalli was earlier governed by Section 43 of the Wakf Act, 1954, and, presently, the same is governed by Section 64 of the Wakf Act, 1995. As per the said provision, notwithstanding anything contained in any other law or the deed of wakf, the Board is empowered to remove a Muthawalli in any of the contingencies as contemplated under Section 64(1)(a) to (k) of the Act. But, however, a reading of the impugned order, reveals that though enquiry report submitted by the enquiry officer is referred to, but however, no reason is recorded for removal of Muthawalli as required under Section 64(1) of the Act. Mere reference to enquiry report does not amount to giving reasons as required under Section 64 of the Act for removal of Muthawalli. Unless specific reasons are given, which constitute any one or more grounds stated in Section 64(1) of the Act, no order can be passed for removal of Muthawalli. From a perusal of the impugned order, it is clear that except reference to the enquiry report, no reason has been recorded for passing the impugned order. On this short ground alone, impugned order is liable to be set aside. Accordingly, impugned order is set aside and the matter is remitted back to the first respondent for fresh consideration. The first respondent-Wakf board is directed to issue

show cause notice to the petitioner calling for his explanation on the enquiry report, and pass appropriate orders in the matter.

As much as it is stated in the counter affidavit that consequent to the removal of the petitioner as Muthawalli, charge was already handed over to the second respondent, and, the second respondent is managing the affairs of the mosque, I direct the respondents to maintain status quo obtaining as on today till appropriate final orders are passed by the competent authority pursuant to the directions of this Court.

The Writ Petition is partly allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 21-11-2006
Pvks/Msnr